App F IX 4

*Previous References*

1924.
mc

File No 21 24

Serial Nos 20
132

*Later References*

Preserve

Rel 32-27 clo 16, 23 [illegible]
rel 95-27 clo 10 & 14
13-29 (2, 3, 8, 9, 10, 13, 15, 16, 18, 36, 38, 48050,
" 34-32 (1-2)
Gen Dep 164-34

# General and Revenue Secretariat.

*Serial*

**Part B for** October 25

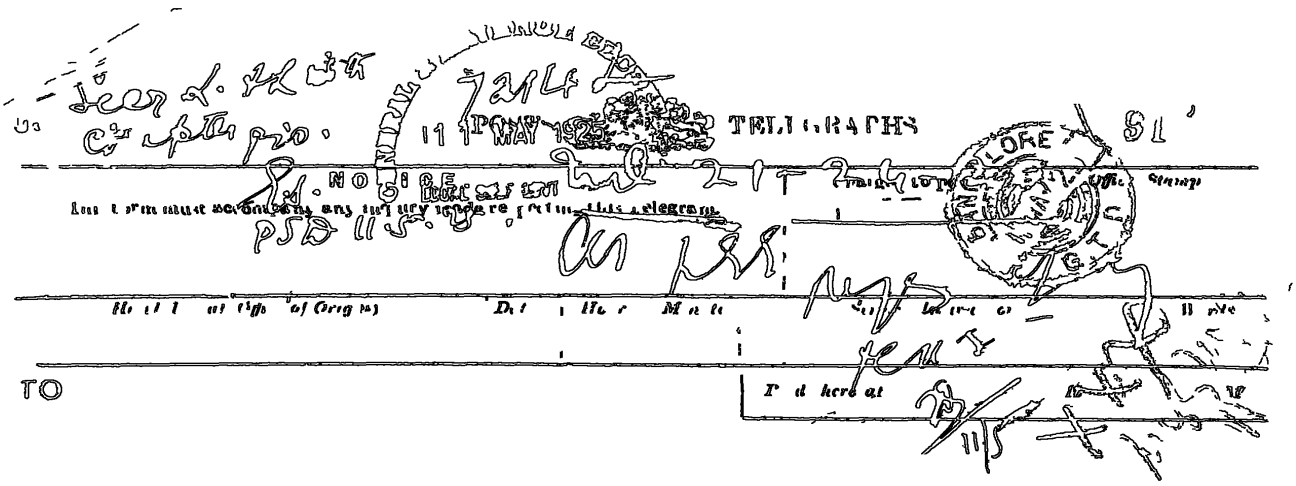
**SUBJECT**

Preservation of the ancient character of the Fort walls and grading of same therein described by private persons or Local bodies

32 JO. The Deputy Comms of Districts No L 2948-55/ dd 23 to 25

Passes orders in the matter referred to above

JB 31-3-27




N.B.—The name of the sender if telegraphed is written after the text

N B —Should routine notes be written on small slips the notes must be copied or slips pasted on this form

H

J R S III—3]

## ROUTINE NOTES

[To be used only for notes, requisitions, etc, not intended for permanent record]

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On the report of the Sanitary Commissioner, further information regarding persons who have filled up the trenches have been called for in this office no No R 5869 dtd 21-23-26 of 10 2 25 Submitted herewith with reference as directed on the 9 a d. The Inspector perhaps he must be asked to explain the unsatisfactory

9242/14/5

I Mr

3) Pass on to the Asst Engr as per the proposal of the Municipal Council, & Sabzi Mandi be demolished without delay

4) Draft plan

A L Should routine notes be written on small slips the notes must be copied or slips pasted on this form

W D 1460—GPB—1 50 000—2-5-21

...al and Revenue Secretariat

File No ... of 19...

Serial No

G.L.S. 111-21

WD-119—G.L.—1,000.

File No 21 of 1914

General and Revenue Secretariat

Serial No

I am surprised at Govt's letter Hq 7. By the same reasoning, if Govt owns a house in the Municipal limits that would become the property of the Municipality. The Chief Secretary's letter makes it very clear that Govt waste are the property of Govt & that the forest people be encroached upon somewhere. I shall be glad to have the Govt's decision whether Govt is not to be consulted.

Dee 3/6/15

(2) It is the opinion of this Legislative Secretary that owing to the wants of the rich he commanded this Govt section of the Collectorate branch

(Collectorate branch)

Secretary

( ...ical and Revenue Secretariat

File No 21 of 1924

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Flag D

firstly — (1) The Solution of the question will depend on the meaning to be attached to the word "Fort" as used in the Go. of 1880, and the words "town walls" mentioned in Sec 506 of the Municipal Regulation, and secondly on whether a notification reserving the fort was necessary when the municipality was constituted & whether the Go. of 1880 may not be considered as special reservation contemplated in sec 50 (2) of the Regulation

(2) So far as I could ascertain there is no legal interpretation of the word 'fort' and in such cases the ordinary meaning of the word as given in an authoritative dictionary has to be adopted. Webster defines a 'fort' as a "strong or fortified place, usually occupied only by troops and surrounded with such works as a ditch, rampart and parapets or other means of defence". The Chinakurady fort was such a fort in times past, though it has now ceased to be utilised as such. The Go of 1880 apparently includes bastions which were forts in this sense, though not used as such then or now. The fort in question is one falling under the Go of 1880, and as a fort-wall is a portion of the fort, the fort-wall must under consideration is within the scope of the Go. of 1880.

OFFICE—Contn Sheet

G.R.S. [illegible]

File No 21 of 1924

General and Revenue Secretariat

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The Municipal Regulation speaks of 'town-walls'. Whether a fort-wall is a town-wall or not or whether there is any distinction between the two is a point for consideration. As the nomenclature is different, theoretically one might be different from the other. However, there is no trouble in coming to a decision in this case. The Municipal Regulation Sec 50, would not apply to fort-walls and as such fort-walls would not be municipal property. Even a 'town-wall' is also a wall round the town for purposes of defence, whether it be of an enemy or robbers, or what boasts the words 'a fort-wall' would only emphasise the fact or perhaps the second denies only. In this sense a 'town-wall' is a generic terms, including a fort-wall. In this view a fort-wall would fall under Sec 50 (2).

Granting that a town-wall includes or fort-wall, the next question is whether the reservation contemplated in the GO of 1880 is ineffective after the passing of the Municipal Regulation or whether it may be construed as the Special reservation contemplated in Sec 50 (2), or whether it was necessary (or desired) to

NOTE—Contin Sheet

Serial No

the file below) it have specially reserved the two fort walls at the time when the Chitaldroog municipality was reconstituted under the Municipal Regulation 1906 (4). It is no doubt a principle of interpretation that when subsequent enactment contains provisions wholly inconsistent with or opposed to any existing law or order, the latter is taken to be repealed by implication by the later enactment. If the words "not being specially reserved by Govt", has not found a place in Sec 50 (2), the Order of 1850 should be considered repealed by implication. It is nowhere stated that the reservation should be at the time that a municipality is constituted. The reservation may have been made earlier, or reservation may even be by unspecified or will be given later. As a matter of fact Sec 50 (3) indicates that reservation can be only at the time or earlier. The notification constituting a municipality only contemplates any particular area to be constituted a municipality. There is no appropriate place in such a notification, for any such matter as reservation of fort walls etc. Public buildings in occupation — e.g. Dist Offices & other Offices, & Courts &c in the occupation of the Govt

see Maxwell on Interpretation of Statutes also Beal on the same subject
I.Q.B. 654
9 Q.B.D. 753 &c

vide Secs 4 & 8

NOTE—Contn Sheet

Serial No.

Departments, are declaration by enactment
they are public buildings in the meaning of
sec 50 (2) but as they are intended for
certain purposes and are in occupation
already of the several Departments, they
must be treated as specially reserved by
Govt, though there is neither a notification
nor express order, either at the time, or before
or after the Constitution of the municipality—
These buildings are Govt. property and not—
in the Municipality— or not is there any
case laying claim to them as such

From the point of view of
pure interpretation of the Govt. of 1850, and
Sec. 50 (2), there is authority for the proposition.
1. When there are Consistent affirmative
enactments (i.e. enactments which relate
to the same subject) and they are not
really contradictory, or a reasonable
Construction to give effect to both should
be accepted, for the reason that the
Legislature does not intend keeping Contradictory
enactments on the Statute Book Strong
reasons would be necessary to Construe the earlier
as so repealed

11 Rep 63a
9 App. Cas 80,

2 A general Act is to be construed as
not repealing a particular one by a
general later but does not abrogate an
earlier special one by mere implication.
Having provided for a particular case, the Legislature
is not presumed to alter that special provision by a subsequent
general enactment unless that intention is expressly
manifested (1898) A.C. 754

3 App Cas 950
3 K & J. 123
(1891) 2 Q.B. 272
64 L.J.Q.B. 157

NOTE—Contin Sheet

Serial No

Though the G.O. of 1880 is not an enactment, it is an order having the force of law, and as such, the principle quoted above may be taken to apply when construing it along with Sec 50 (2) of the Municipal Regulation. Under the second principle quoted above, the G.O. would be treated as an exception to Sec 50 (2), even if there was no provision in Sec 50 (2) giving a right ~~to [illegible] to~~ ~~[illegible]~~ of reservation to fort [illegible] [illegible] So much, considering there is such a provision.

For these reasons the fort-wall ~~[illegible]~~ does not seem to vest in the Municipality under Sec 50 (2), but is still governed by the order of 1880, whether taken in conjunction with Sec 50 (2) or even apart from it.

Asst Secy.

It is a fundamental principle of interpretation that the words used in an enactment should have their ordinary grammatical meaning ~~[illegible]~~. Applying this canon of construction, it is clear that the word 'fort' is not synonymous with 'Townwall'.

Fort means a strong or fortified place, usually, fortified place occupied only by troops, surrounded with such works as a ditch, rampart, & parapet or other means of defence as fortification (See Webster).

Whereas there is no such complex meaning as Townwall.

On the analogy of a townhall, it may mean either a wall belonging to a town or

Cary 7/7

File No 21 of 1924

Serial No.

or a lease of permanent endowing force, and a transfer of a term (as before).

Heard for the town-clerk. Counsel for the Crown, the Commissioners for Crown Lands.

I think, the Commissioners for Crown Lands do not object to municipal Council under sec 12 of the Municipal Corporations Act 1882.

In s 6 of 1894 which is in the form of an amendment of the Municipal Corporations Act 1882, the municipal borough shall be the successor of any village, and, as such, shall have all the rights (including rights of pasture and burgage) and property of the village.

The demand for payment is in lieu of the rights of the freemen (including rights of pasture and burgage) which are public property should be preserved to them by the Corporation as freemen of the borough, and that the municipal borough shall obtain the freehold of the land subject to the rights of the freemen.

In sec 2 of the Act, s. 6 is not repealed.

Answering that 'lands' are included in 'town-lands' for the sake of the ground. It is clear that by sec 50, the municipal Council can hold them as trustees.

The wording of sec 50 'shall be held applied for by them as trustees, subject to the provisions of the Act' for the purposes of the Act.

Then s 6, lands are held by the public for public purposes, the municipal Council can only be trustees as trustees (sec 50). The demand for the benefit of the freemen by the public is the town.

The demand affects the freemen of the borough as they are not rights and property of the Crown.

NOTE—Contn Sheet

12

R S III-21

General and Revenue Secretariat

File No. 21 of 1924

Serial No

(5) There is no provision, so far as I am aware, made in the Rent for the fact that Hindus by custom of ancient date proceed to burn their dead

If the framers of land Regs had in view that such are to be included in 'town-halls', one would naturally expect some provision relating to the disposal or to the precaution in use of the historical ground

(6) Coming now to the legal aspect, it is always firmly settled that whatever the intention of the Legislature is not if there are apparently contradictory enactments on the Statute Book, that a special enactment will not by implication have the effect of abrogating a special enactment.

(7) Even in the case of two seeming contradictions the duty of an interpreter is to reconcile the apparent contradictions if possible such construction to words which are capable of double meaning, as to reconcile the apparent contradiction

There is to give effect to the presumption that the Legislature has not intended a double body of persons between whom the provisions of the Statute of Law & Justice are distributed, to enact contradictory provisions -

(8) From the view of the Law, it is clear that by using a compound word Town hall the Legislature cannot be taken to have repealed the Reg 6 of 1800 having the force of law & to include the Town Hall & Municipal buildings within the term

NOTE—Contin sheet

SJ

— + —

ml file no 21 of 1924

I am directed to refer to your letter 'Non-Coll.' dated 19th July 1924 and to state that the Rules do not include 'forts' & similar buildings' as used in G.O. of 1880 etc., & that the property in forts does not vest in local authorities

821/28/7

24/7/25

32) Please submit the file to the Secretary to the G.O. regarding the question of the demarcation of the Fort walls, as cancelled or altered by the Municipality

33) What are the proposals for a retaining wall established by a previous G.O.; I think that for the reasons for the construction of the wall, which are retaining purposes, should not be allowed to disturb its existing on the way to support the demarcation of the Municipality was walls by the Secretary some time ago

DEPUTY COMMISSIONER'S OFFICE RECD 31 JUL 1925 Galle

28/7/25

30/7/25

Secretary

Municipal Council Galle

1466 14/8

Please see the accompanying letter from the Municipal Council Galle to hand over the Fort walls to the Municipality

Secretary

14/8

...nd Revenue
...cretariat

WL File No. 21 of 1924

Serial No

Sanction please

15/8

Dead copy referred to the Deputy Commissioner's letter dated 3.10.24 Flag C. the estimate along with plan for felling up the breaches around the town of Chittaldrug at an estimated cost of Rs 13,670/ has been received. The same was forwarded to the Sanitary Commissioner in Mysore for opinion after the inspection of the locality (vide paras 6 & 13 of notes) and on this a list of persons who have felled up the breaches was called for from the Dy Commr. The list called for has also been received Flag B Submitted for orders both a draft letter to the Dy Commr Chitaldrug & draft memo to the Govt

17/8 As the order of 23.7.24 was addressed to the Dy Commr Chitaldrug, the Revenue & the Chief Engineer orders are solicited as to whether the other Dy Commrs & the Supdts of Police (Cys and Cs including) should be addressed in the matter.

17.8.25 L. L. Secy

(39) The papers may please be put up with the legal opinion, for issue of Sanction & draft memo to Govt

L.L Secy

Note—Contn Sheet

eral and Revenue Secretariat | ml File No | of 1924

Serial No

40) The Secretary Director Finance may be pleased to sign the attached letter to the Secretary Finance

28/8

41) The draft already put up to Hon'ble Member may be passed for issue

29/8

2112
31-8

42) On the earlier occasion, the Member has ordered for the information of the 2 Secy: The draft to Mr. Hyme is in approved 2 Secy)

31/8

43 Submitted with reference to para 39 above

44) I have already recorded my opinion regarding the legal aspect of the case, (vide paras 22 to 31) I have nothing more to add at this

45) Draft letter to D.C. may perhaps be approved

46) Approved. Please draw up a general circular for communication to D.C's for information

1/9

2-9

47) Draw the proposed circular

8) Required by the Member with the papers and file returned

DTE—Contn Sheet

Serial No

49) If approved Draft Despatch with proposed Circular may please be sent by Secret Telegram

L. L Rees) 28/9

50) Draft approved may please be sent by Secret Telegram

4-9

51) The Member Director Draft Despatch approved by him may please be sent by Secret Telegram Circular also please be sent by Secret Telegram

L L Rees) 28/9

51) Done

28/9

L 1943 11 9 25

D C Political Secret & copy to Chief Secy Govt & Chief Commissioner States the order may be considered to be in abeyance or suspended pending further consideration and final orders of the Govt

[ Draft. Do letter No L 19 12 D 11 9 25 issued to the Dy Comr Hissar Dept to put up with the Hissar Dy Comrs letter No dc 6/26 258 22 9 25 D no 2179 x 25 submitted with a draft due to expire on para 36, 46 & 57 ]

Please submit with the circular letter

Hissar 14/9 HMK 15/9 25 Please type this draft for signature by me

28/9 15/9

Circular

Typed draft put up

Hissar 15/9 HMK 15/9/25 L L Rees) 28/9

Draft as revised may be approved for signature 21/9

28/9 15/9

2887 24/9

NOTE—Contn Sheet

d Revenue
etariat

File No 21 of 1924

Serial No

Subject
Ring of Fort walks

DEWAN'S OFFICE.
Rec'd 1 OCT 1925
Regd. No 27385

54) The draft Circular has now to be submitted to the Dewan with reference to this order in para 34 of the note, requiring the Cancellation of the order of July 1921 vesting the Fort walks in the Chitaldrug Town in the Municipality.

An order has been issued separately in regard to the particular case

55) The draft Circular enunciates the general principles in regard to these walks has been approved by the 2nd Member during the absence of the Dewan

2 2 Recd)

Submitted with refe to para 34

Dewan)

Draft circular approved by member may issue

PSD 13/10/25

In personal reference

2nd Member

Seen

Dewan

—Centn Sheet

[App F III—2

General and Revenue Secretariat | File No 21 of 1914

Serial No 1

32

L 2948-55 dated 23/10/25

Dists of all Districts States that the fort walls vest in Government and can not be form the property of a Municipal council unless specially transfe by Govt to that body by a specific order of Govt, that they should continue to be remain under the control of the Dy Commrs & the wilful or malic destruction these walls should not be permitted

GENERAL & REVENUE SECRETARIAT Bombay OCT 1925 to Govt. Branch

The matter is to be settled for similar cases contemplated at para 35 supra.

From The Circular yours No. [illegible]

31/10 [illegible]

31/10

YS 28/10

There was a [illegible] for demarcation, that was the work of [illegible]

D 2149

The Supreme Court [illegible] Separate [illegible]

2149 -7 -

11

App F III—2]

WD 0569—GPB—40,000—31 7

File No of 192

General and Revenue Secretariat

Serial No

NOTE—Contn. Sheet

All communications should be addressed to the Secretary to the Resident in Mysore Bangalore by designation and not by name

4512

No 4082 Encls. 1

GEN. SECTT. 15 MAY 1925 G.A. SECTION

OFFICE OF THE RESIDENT IN MYSORE.

Bangalore, 14th May 1925

Pol 1293

A copy of the marginally noted telegram is forwarded with compliments, to the Chief Secretary to the Government of H H the Maharaja of Mysore, for favour of such action as may be considered necessary.

No - dated the 11th May 1925.
from Madkarimk Palyagar, Chitaldrug.

CENTRAL REVENUE SECRETARIAT 2312 16 MY GENERAL BRANCH

Major,
Secretary to the Resident

PN

R O 106—R P B—7 1924—2 000

D

Telegram dated the 11th May 1925, from Madkarimak, Palyagar, Chitaldrug. to the Hon'ble the Resident in - Mysore, Bangalore

Vice president Chitaldrug without permission demolishing fortwalls temples pray for orders deputy commissioner stop this action hold enquiry and report matter to government for final orders.

— O —
"C O P Y"

REGISTRAR, RESIDENT'S OFFICE.

PN

Extracted from the Land Revenue Manual Page 12 Page 64

**Charge of Forts and similar Buildings.**

**Deputy Commissioners are in charge of all forts and similar buildings in their districts No stones from them should be removed except with their permission. A Deputy Commissioner may grant such permission in the case of - - dilapidated buildings the removal of which is desirable, but where the buildings are more or less in a state of - preservation or possess historical interest and generally, in all cases of doubt, orders of Government should be - - obtained. Municipal bodies and even the proprietors of Inam villages have, as a rule, no right in these buildings which are public property, though situated within their limits, but they should be consulted where the removal of the stones is likely to affect their interests**

2484-91/Mis.253, dated 27-7-1880,
1820-7//Cir.40, dated 11th May 1889.

********

G14 B650

2 Drafts

Section Nil
File No 21.24
Serial No

Diary No of letter replied to 8

No. A 1943

To The Deputy Comm.r Cantaldery

General and Revenue Secretariat
( )
, the 192

Sir,

Date of issue 11/9/25

I am directed to invite reference to Your Office letter No L 402 Jail 30-20-24 dated the 23rd July 1921 ~~stating that~~ in forwarding ~~Sketch Plan of Cantaldery~~ that the Fort Walls of Cantaldery have been considered as forming ~~part~~ front of the property vested in the Municipality since no reservation had been made in the Notification fixing the limits of the Municipality, and to state that the above ~~opinion~~ ~~contained therein~~ may be

Signed by Mr T C S

List of enclosures

Copied by

Examined by

Recover

~~Considered~~ to be in ~~suspense~~ abeyance or suspense pending further Consideration and final ~~orders of Govt~~ be
remission of the portion and not be allowed, without forwarding copy of the hearing Main Road Gen Section, & Line of the walls that do not, dotted for Cents shall be demolished

~~17/8~~ Reply to Govt
~~HMK~~ Dist & Supdt
178

From 17/8 Memo of 1944
Copy forwarded to the
Rev Comr in Mysore with reply
~~Contractor~~ of this Office
Memo No L 483 & 237 1924
By order

~~17/8~~
HMK 178 for Secy to Govt
Dy Secy

Memo of 1945
Copy forwarded to the
Chief Engineer of Mysore with reference to copy to
in ~~Contractor~~ of this Office
Memo No L 483 & 237 1924
By order

~~17/8~~
HMK 178 for Secy to Govt

re L 1946
Copy to Mr Henderson
Chief Engineer
Main Road

L 2948-55 dt 21-24-32 & 23/12/32

CIRCULAR MEMORANDUM

Under G O No 2484-91/ 18 353, dated the 27th July 1880, which has the force of law, District Officers are in charge of all forts in their Districts and no stones should be removed therefrom except with their permission and the Municipal bodies can have as a rule no right in them though they may be situated within their limits Nevertheless exceptions have come to be made in favour of some Municipal Councils whereby it has been ordered that either the sale proceeds of fort stones may be credited to Municipal funds as a special case with a view to improve the financial condition of the Municipality or the fort walls vesting in the Municipality may be demolished in accordance with a definite programme of improvement

The Government have now fully considered all the aspects of the question and are of opinion that the fort walls vest in Government and cannot form the property of a Municipal Council unless specially transferred to that body by a specific order of Government, that they should continue to remain under the control of the Deputy Commissioners and that for historic and other reasons the indiscriminate destruction of these walls which are a striking feature of Mysore should not be permitted The Deputy Commis-

sioners of Districts are requested to take steps to preserve the ancient -- character of these walls and to guard against their destruction or removal of stones therefrom by any individual or local bodies.

In case where meddling with these walls is required necessary for any cogent reason special application may be made to Government for consideration with definite scheme in the matter

" By Order "

L & L Secy , to Govt

To

The Deputy Commrs , of Districts